

IN THE UNITED STATES DISTRICT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

MATTHEW TOTILO, individually and on	:	
behalf of himself and all others similarly	:	
situated,	:	Case No. 07-cv-10991-LAK
Plaintiff	:	
v.	:	
STEVEN F. HERBERT and	:	
JAMES P. GROSS,	:	
Defendants.	:	

**NOTICE OF DEFENDANTS' MOTION,  
IN ALTERNATIVE TO ITS MOTION TO DISMISS, TO TRANSFER THIS CASE  
TO THE NORTHERN DISTRICT OF GEORGIA PURSUANT TO 28 U.S.C. § 1404(a)**

PLEASE TAKE NOTICE that upon the Memorandum of Law and Declaration of Lisa Albert submitted herewith, with exhibits, and upon the Complaint herein, attorneys for the Defendants, Steven F. Herbert and James P. Gross ("Defendants"), will move this Court before the Honorable Lewis A. Kaplan, United States District Judge, at the United States Courthouse 500 Pearl Street, New York, NY 10007, heard on a date to be determined, for an order, in the alternative to Defendants' contemporaneously filed Motion to Dismiss, transferring this case to the United States District Court for the Northern District of Georgia pursuant to 28 U.S.C. § 1404(a) for the convenience of the parties and witnesses and in the interests of justice, and for such further relief as the Court deems just and proper.

Dated: February 11, 2008.

Respectfully submitted,

/s/ Lisa Albert

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*Attorneys for Defendants Steven F. Herbert  
and James P. Gross*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, this day, a true and correct copy of the foregoing NOTICE OF DEFENDANTS' MOTION, IN ALTERNATIVE TO ITS MOTION TO DISMISS, TO TRANSFER THIS CASE TO THE NORTHERN DISTRICT OF GEORGIA PURSUANT TO 28 U.S.C. § 1404(a) was served by filing in the Court's CM/ECF system, which will automatically send email notification of such filing to the following counsel of record:

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DATED: February 11, 2008.

/s Lisa Albert

Lisa Albert (LA-7264)